STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 28, 2000
v	No. 209273 Kent Circuit Court
FEDERICO LUIS CRUZ, a/k/a KIKO CRUZ, Defendant-Appellant.	LC No. 96-005857 FC

Before: Markey, P.J., and Murphy and R.B. Burns*,JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, and mutilation of a dead body, MCL 750.160; MSA 28.357. He was sentenced to life imprisonment without parole for the first-degree murder conviction and 80 to 120 months' imprisonment for the mutilation conviction. He appeals by right. We affirm.

The trial court did not abuse its discretion in denying defendant's request to offer a surrebuttal closing argument on the question of defendant's insanity defense. MCR 6.414(E); see *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). As the trial court observed, the amendments to the insanity statute, MCL 768.21a(3); MSA 28.1044(1)(3), provide no indication that the Legislature intended to vary the long-standing rules relative to the presentation of closing arguments. See, e.g., *Watt v Ann Arbor Bd of Ed*, 234 Mich App 701, 706; 600 NW2d 95 (1999); *Elenbaas v Dep't of Treasury*, 235 Mich App 372, 377; 597 NW2d 271 (1999) (Gage, J., dissenting).

Similarly, the trial court did not abuse its discretion in rejecting defendant's request to allow Dr. Harris to reserve testimony regarding the report and evaluation of the prosecution's expert Dr. Clark, until after Dr. Clark testified, where Dr. Harris was fully capable of being examined on direct-examination concerning Dr. Clark's report and evaluation.

Next, the trial court did not abuse its discretion in excluding as demonstrative evidence a tape of a mock job interview purportedly demonstrating what a schizophrenic person hears in his head. See

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

generally *People v Sawyer*, 222 Mich App 1, 5; 564 NW2d 62 (1997). The trial court

did not clearly err in its determination that a sufficient foundation for this demonstrative evidence had not been established. See *Lopez v General Motors Corp*, 224 Mich App 618, 634-635; 569 NW2d 861 (1997). Further, the trial court properly determined that the simulation tape would cause undue confusion for the jury. MRE 403.

Defendant also argues that the trial court abused its discretion by not permitting Jon McKay, a social worker at the jail where defendant was incarcerated, to proffer a lay opinion on whether defendant was mentally ill. We disagree. Evidence in the form of lay testimony may be admitted to rebut a presumption of sanity. *People v Zabijak*, 285 Mich 164, 185; 280 NW 149 (1938), overruled on other grounds, *People v Vermeulen*, 423 Mich 32; 438 NW2d 36 (1989); *People v Johnson*, 52 Mich App 560, 561-562; 218 NW2d 65 (1974), quoting *Zabijak, supra;* see also *People v Hayes*, 421 Mich 271, 291-292; 364 NW2d 635 (1984) (Levin, J., dissenting). Here, however, even assuming that McKay had a sufficient opportunity to observe defendant and form an opinion as to his sanity, as the trial court observed, he was only called to testify pursuant to the business records exception to the hearsay rule, MRE 803(6). Moreover, defendant provided no advance notice that McKay would be asked to proffer an opinion on the question of defendant's sanity. Nonetheless, McKay's testimony, primarily in the form of reading record entries, pertained to defendant's mental state. At one point McKay also reiterated his belief that defendant is a sociopath. Thus, any further opinion testimony would have been cumulative under MRE 403. Under these circumstances, we find no abuse of discretion in denying McKay's opinion testimony as to defendant's sanity. Further, given the cumulative nature of the testimony, there is no reasonable probability that its exclusion affected the outcome of trial; therefore, any error would be harmless. *People v Hubbard*, 209 Mich App 234, 243; 530 NW2d 130 (1995).

Finally, defendant argues that the jury's verdict is contrary to the great weight of the evidence. Because defendant did not raise this issue in a motion for a new trial, it is not preserved. *Brown v Swartz Creek Memorial Post 3720 - Veterans of Foreign Wars, Inc*, 214 Mich App 15, 27; 542 NW2d 588 (1995); *Buckeye Marketers, Inc v Finishing Services, Inc*, 213 Mich App 615, 616-617; 540 NW2d 757 (1995), modified on other grounds 453 Mich 924 (1996). Given that the parties' experts presented conflicting testimony on the issue of defendant's sanity, it was up to the jury to assess the credibility of each expert and weigh his testimony accordingly. A motion for a new trial based solely on the weight given to witness credibility is not favored. *People v Lemmon*, 456 Mich 625, 638-639, 642-643; 576 NW2d 129 (1998); *People v Smith*, 158 Mich App 220, 230; 405 NW2d 156 (1987). In any event, the evidence here does not preponderate heavily against the verdict; a serious miscarriage of justice would not otherwise result. *Lemmon, supra* at 642.

We affirm.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Robert B. Burns